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APPENDIX ON BEHALF OF APPELLANTS

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In The

**Supreme Court of the United States**

October Term, 1963

No. 69.

LEVIN NOCK DAVIS, SECRETARY, STATE  
BOARD OF ELECTIONS, ET AL.,

*Appellants,*

v.

HARRISON MANN, ET AL.,

*Appellees.*

Appeal from the United States District Court for the  
Eastern District of Virginia at Alexandria

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August 29, 1963

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Appeal from the United States District Court for the  
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APPENDIX ON BEHALF OF APPELLANTS

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APPENDIX I

THE STATUTES INVOLVED

Chapter 635, Acts of Assembly of Virginia, 1962, page 1266, codified as §24-14 of the Code of Virginia (1950), as amended, 1962 Cumulative Supplement, Volume 5, pages 137, 138, reads as follows:

Be it enacted by the General Assembly of Virginia:

1. That §24-14, as amended, of the Code of Virginia, be amended and reenacted as follows:

§24-14. The State is hereby divided into thirty-six districts entitled to senators as follows:

First.—The counties of Accomack, Northampton, Princess Anne and the city of Virginia Beach, one.

Second.—Norfolk city, two.

Third.—Norfolk county and the city of South Norfolk, one.

Fourth.—The counties of Halifax, Charlotte and Prince Edward and the city of South Boston, one.

Fifth.—The counties of Isle of Wight, Nansemond, Southampton and the cities of Suffolk and Franklin, one.

Sixth.—The counties of Greenville, Prince George, Surry and Sussex and the city of Hopewell, one.

Seventh.—The counties of Brunswick, Lunenburg and Mecklenburg, one.

Eighth.—The counties of Dinwiddie, Nottoway and the city of Petersburg, one.

Ninth.—Arlington county, one.

Tenth.—City of Portsmouth, one.

Eleventh.—The counties of Appomattox, Buckingham, Cumberland, Powhatan, Amherst, Nelson and Amelia, one.

Twelfth.—Campbell county and city of Lynchburg, one.

Thirteenth.—The counties of Henry, Patrick and Pittsylvania and cities of Danville and Martinsville, two.

Fourteenth.—The counties of Smyth, Carroll, Floyd, Grayson and the city of Galax, one.

Fifteenth.—The counties of Washington, Lee and Scott and the city of Bristol, one.

Sixteenth.—The counties of Dickenson and Wise and the city of Norton, one.

Seventeenth.—The counties of Buchanan, Russell and Tazewell, one.

Eighteenth.—The counties of Bland, Giles, Pulaski and Wythe, one.

Nineteenth.—The counties of Alleghany, Bedford, Betsworth, Craig and Rockbridge, and the cities of Buena Vista, Clifton Forge, and Covington, one.

Twentieth.—The counties of Franklin, Montgomery, and Roanoke, and the city of Radford, one.

Twenty-first.—The counties of Augusta, Bath, and Highland, and the cities of Staunton and Waynesboro, one.

Twenty-second.—The counties of Page, Rappahannock, Rockingham and Warren, and the city of Harrisonburg, one.

Twenty-third.—The counties of Clarke, Frederick, Shenandoah and the city of Winchester, one.

Twenty-fourth.—The counties of Albemarle, Fluvanna, Greene and Madison, and the city of Charlottesville, one.

Twenty-fifth.—The counties of Goochland, Louisa, Orange and Spotsylvania, and the city of Fredericksburg, one.

Twenty-sixth.—The counties of Culpeper, Fauquier and Loudoun, one.

Twenty-seventh.—The county of Fairfax and the cities of Fairfax and Falls Church, two.

Twenty-eighth.—The counties of King George, Lancaster, Northumberland, Prince William, Richmond, Stafford and Westmoreland, one.

Twenty-ninth.—The counties of Caroline, Hanover, King William, Essex, King and Queen, Middlesex, Gloucester and Mathews, one.

Thirtieth.—City of Newport News and county of York, one.

Thirty-first.—City of Hampton, one.

Thirty-second.—The counties of Charles City, Chesterfield, James City and New Kent and the cities of Colonial Heights and Williamsburg, one.

Thirty-third.—Richmond city, two.

Thirty-fourth.—County of Henrico, one.

Thirty-fifth.—City of Roanoke, one.

Thirty-sixth.—City of Alexandria, one.

Chapter 638, Acts of Assembly of Virginia, 1962, page 1269, codified as § 24-12 of the Code of Virginia (1950), as amended, 1962 Cumulative Supplement, Volume 5, pages 135, 136, 137, reads as follows:

Be it enacted by the General Assembly of Virginia:

1. That § 24-12, as amended, of the Code of Virginia, be amended and reenacted as follows:

§24-12. Members of the House of Delegates shall be distributed and apportioned, and each county, city and combination is entitled to representation in the House of Delegates by a delegate, or by delegates, as follows:

First.—Accomack, one.

Second.—Accomack and Northampton, one.

Third.—Albemarle and Greene, one.

Fourth.—Charlottesville, one.

Fifth.—Alexandria, two.

Sixth.—Alleghany, Covington and Clifton Forge, one.

Seventh.—Amelia, Powhatan and Nottoway, one.

Eighth.—Amherst and Lynchburg, one.

Ninth.—Arlington, three.

Tenth.—Augusta, Highland, Staunton and Waynesboro, two.

Eleventh.—Bedford, one.

Twelfth.—Bland and Giles, one.

Thirteenth.—Botetourt, Craig and Roanoke County, one.

Fourteenth.—Brunswick and Lunenburg, one.

Fifteenth.—Buchanan, one.

Sixteenth.—Russell and Dickenson, one.

Seventeenth.—Buckingham, Appomattox and Cumberland, one.

Eighteenth.—Campbell, one.



Nineteenth.—Caroline, King George, Essex and King and Queen, one.

Twentieth.—Carroll and Floyd, one.

Twenty-first.—Charles City, James City, New Kent, York and Williamsburg, one.

Twenty-second.—Charlotte and Prince Edward, one.

Twenty-third.—Chesterfield and Colonial Heights, one.

Twenty-fourth.—Clarke, Frederick and Winchester, one.

Twenty-fifth.—Danville, one.

Twenty-sixth.—Hampton, one.

Twenty-seventh.—Fairfax, and cities of Fairfax and Falls Church, three.

Twenty-eighth.—Fauquier and Rappahannock, one.

Twenty-ninth.—Fluvanna, Goochland and Louisa, one.

Thirtieth.—Franklin, one.

Thirty-first.—Gloucester, Mathews and Middlesex, one.

Thirty-second.—Grayson and Galax, one.

Thirty-third.—Greensville and Sussex, one.

Thirty-fourth.—Halifax and South Boston, one.

Thirty-fifth.—Hanover and King William, one.

Thirty-sixth.—Henrico, one.

Thirty-seventh.—Henry, Patrick and Martinsville, two.

Thirty-eighth.—Isle of Wight, Nansemond and Suffolk, one.



Thirty-ninth.—Northumberland, Westmoreland, Lancaster and Richmond County, one.

Fortieth.—Newport News, three.

Forty-first.—Lee, Wise, and city of Norton, two.

Forty-second.—Loudoun, one.

Forty-third.—Lynchburg, one.

Forty-fourth.—Madison, Culpeper and Orange, one.

Forty-fifth.—Mecklenburg, one.

Forty-sixth.—Montgomery and Radford, one.

Forty-seventh.—Nansemond and Suffolk, one.

Forty-eighth.—Nelson and Amherst, one.

Forty-ninth.—Norfolk county and South Norfolk, two.

Fiftieth.—Norfolk city, six.

Fifty-first.—Page and Warren, one.

Fifty-second.—Petersburg and Dinwiddie, two.

Fifty-third.—Pittsylvania, two.

Fifty-fourth.—Portsmouth, two.

Fifty-fifth.—Prince George, Surry and Hopewell, one.

Fifty-sixth.—Princess Anne and Virginia Beach, two.

Fifty-seventh.—Prince William, one.

Fifty-eighth.—Pulaski, one.

Fifty-ninth.—Richmond city, and Henrico, eight.

Sixtieth.—Roanoke County, one.

Sixty-first.—Roanoke city, two.

Sixty-second.—Rockbridge, Bath and Buena Vista, one.

Sixty-third.—Rockingham and Harrisonburg, two.

Sixty-fourth.—Shenandoah, one.

Sixty-fifth.—Smyth, one.

Sixty-sixth.—Southampton and the city of Franklin, one.

Sixty-seventh.—Spotsylvania, Stafford, and Fredericksburg, one.

Sixty-eighth.—Tazewell, one.

Sixty-ninth.—Washington, Scott, and Bristol, two.

Seventieth.—Wythe, one.

And the districts hereby created are hereby numbered one (1) to seventy (70) inclusive.

The reference to a county or city in this section is to the area comprising such county or city as of January one, nineteen hundred sixty-two.

## APPENDIX II

### BILL OF COMPLAINT FOR INJUNCTION

To the Honorable Judge of the Court aforesaid:

Your plaintiffs respectfully represent unto this Honorable Court as follows:

FIRST:—Plaintiffs herein are residents of the City of Norfolk, Virginia, citizens of the United States and of the Commonwealth of Virginia and are registered and qualified voters of said city and state and are entitled to vote for

members of the General Assembly of the Commonwealth of Virginia and bring this complaint for injunction on behalf of themselves and other citizens similarly situated.

SECOND:—The defendants, Levin Nock Davis, Alexander M. Harman, Jr., and Harry H. Vaughan, and each of them are citizens of the United States and of the Commonwealth of Virginia, reside in said Commonwealth and are members of the State Board of Elections of the Commonwealth, the defendant, Levin Nock Davis, being Secretary thereof. The said defendants are sued in their representative capacity as members of the State Electoral Board and in their capacity as members of said Electoral Board the said defendants are charged with supervising and co-ordinating the work of city and county electoral boards, including the designating of the number of candidates for which a voter in a particular locality may vote: they have the specific duty of certifying to local electoral boards the names of candidates to be printed on the ballots to be used in the Democratic Primary to be held in July of 1963, and said certifications limit the names of candidates for the General Assembly of Virginia to appear on said ballots and said certifications will be made immediately after April 10, 1963, the expiration time within [which] the names of candidates may be filed for the Virginia General Assembly; the said Electoral Board will promptly after April 10, 1963, have printed official war ballots for forwarding to members of the Armed Forces who apply for such absentee ballots, and the candidates appearing on said ballots will be limited to those certified by the said Electoral Board and voters in Norfolk will be limited to voting for two members of the State Senate and six members of the House of Delegates; and the said defendants perform other duties with respect to elections.

**THIRD:**—The defendants, James M. Wolcott, Joseph T. Fitzpatrick and James E. Baylor, and each of them are citizens of the United States and of the Commonwealth of Virginia, and reside in Norfolk, Virginia, and are members of the Norfolk Electoral Board. Said defendants are sued in their capacity as members of the Norfolk Electoral Board and as members of said board the said defendants are charged with conducting elections in the City of Norfolk, Virginia, including primaries and general elections; coordinate elections, including the printing of ballots for said election and designating the number of candidates for the Virginia General Assembly the voters of Norfolk may vote for. Unless enjoined the said defendants will limit the voters of Norfolk to voting for two members of the State Senate and six members of the House of Delegates.

**FOURTH:**—Sections 41 through 43, inclusive, of the Constitution of Virginia provide that the legislative power of the Commonwealth shall be vested in a General Assembly which shall consist of a Senate and a House of Delegates; that the Senate shall consist of not more than forty and not less than thirty-three members who shall be elected quadrennially by the voters of the several senatorial districts; that the House of Delegates shall consist of not more than one hundred and not less than ninety members who shall be elected biennially by the voters of the several House districts; and that a reapportionment of the Commonwealth into Senatorial and House districts shall be made in the year 1932 and every ten years thereafter.

**FIFTH:**—By Sections 24-14 and 24-12 of the Code of Virginia of 1950, as amended, the General Assembly of Virginia in 1962 purported to enact amendments to said sections reapportioning the Senate and House districts. A

list of the Senatorial Districts as thus purportedly reapportioned by the General Assembly, with their respective locations, populations and numbers of Senators is set forth in Exhibit "A" annexed to this complaint and made a part hereof, and a list of the House districts as thus purportedly apportioned by the General Assembly, with their respective locations, populations and numbers of Delegates are set forth in Exhibit "B" hereto attached and made a part hereof. Said Acts of the General Assembly became effective on June 28, 1962, and govern the number of representatives to the State Senate and House of Delegates from Norfolk to the Virginia General Assembly that the plaintiffs may exercise their right to vote for and govern the number of representatives to the State Senate and House of Delegates from Norfolk that will be elected in the Democratic Primary to be held in July of 1963 and for which the deadline for qualifying is now set for April 10, 1963.

**SIXTH:—**That the plaintiffs as citizens of the United States and of the State of Virginia possess the inherent right to vote for members of the Virginia General Assembly and to cast votes that are equally effective with the votes of every other citizen of said state and the said rights are recognized and guaranteed by the Constitution of the United States and, if not, should be protected by the Constitutional Laws of the State of Virginia.

**SEVENTH:—**Notwithstanding the Constitutional requirement that representation in the House of Delegates and the Senate of the Virginia General Assembly be fairly apportioned without effecting invidious discrimination as to the citizens of Norfolk, the General Assembly of 1960 refused to constitute a study commission to study the complex question of fair apportionment of the state's representation and

in view of this abrogation of responsibility then Governor, J. Lindsay Almond, Jr., appointed an impartial study commission consisting of citizens and legislators, which is popularly known as the "Hoover Commission," to study the question of fair apportionment of representation and directed them to report to the 1962 General Assembly. Said commission duly commissioned the Bureau of Public Administration of the University of Virginia to submit plans consistent with fair apportionment and said Bureau of Public Administration submitted plans known as Plans "A" and "B," a copy of said Plans "A" and "B" being attached to this complaint and made a part hereof and being marked as Exhibits "C" and "D" respectively. Each of said plans allocated to the City of Norfolk three representatives in the Senate of Virginia and seven representatives in the House of Delegates. The aforesaid "Hoover Commission" failed to adopt either plan "A" or "B," but did submit a report which allocated to Norfolk three representatives in the Senate and seven delegates in the House of Delegates. Said "Hoover Commission" report is attached hereto marked as Exhibit "E" and made a part of this complaint. (A material excerpt of said report has been attached to the copies of this complaint which are served upon the defendants and marked as Exhibit "E") The General Assembly of Virginia rejected the aforesaid plans and enacted token redistricting without rational basis that constituted a "crazy quilt" of inconsistencies and effected invidious discrimination in violation of plaintiffs' constitutional rights and those of other citizens of the City of Norfolk similarly situated.

**EIGHTH:**—Plaintiffs aver that by virtue of the invidious discrimination produced by the General Assembly in the re-apportionment statutes hereinbefore referred to, which limits Norfolk to two Senators and six Delegates, the vote of



the plaintiffs is inferior in value to the votes of other voters residing in other Senatorial districts and House districts in the Commonwealth. As an example of the unconstitutional effects of the discriminatory dilution of the weight of a voter's ballot in the City of Norfolk, as effected by the amendment of Section 24-14 of the Code of Virginia enacted by the General Assembly in 1962, each state Senator from the City of Norfolk represents 152,936 residents of the City of Norfolk, while less than half that number of persons residing in what is now the City of Chesapeake, Virginia (formerly the City of South Norfolk and Norfolk County, Virginia) are afforded equal representation in the State Senate. Each Delegate to the House of Delegates from the City of Norfolk represents 50,978 residents, while it takes only 36,823 persons residing in the City of Chesapeake to entitle these localities to the same representation in the House of Delegates. The City of Virginia Beach, Virginia (formerly the County of Princess Anne and the City of Virginia Beach) was awarded an extra delegate by the afore-said reapportionment statute based solely upon an increased population. The City of Norfolk, which enjoyed increased population between 1950 and 1960 of over 90,000 citizens, was given no additional representation in either the House of Delegates or the Senate. The unconstitutional discrimination against the equal weight of the ballot afforded the citizens of Norfolk, Virginia, by the disproportionate provisions of said amendment is further demonstrated and documented by the fact that the voters of Loudoun County have one Delegate for 24,549 persons; the voters of Shenandoah County have one Delegate for 21,825 persons; and the voters of Wythe County have one Delegate for 21,975 persons; and the voters of three other cities and twelve counties in the Commonwealth have a Senator for every 67,000 persons or less. The population growth in the



City of Norfolk, in which the plaintiffs reside, is much more rapid than in the favored sections of the Commonwealth referred to above, so that with each passing year the discrimination against plaintiffs and other voters in the City of Norfolk will become more acute and invidious. A table showing the "Index Value" of the right to vote for members of the General Assembly of Virginia, by counties, from 1910 through 1960 is annexed as Exhibit "F" to this complaint and made a part hereof.

NINTH:—Plaintiffs aver that the aforementioned Acts of the General Assembly embodied in Code Sections 24-12 and 24-14, as amended in 1962, have resulted and will continue to result in invidious discrimination in violation of plaintiffs' constitutional rights and the constitutional rights of all other voters of the City of Norfolk and against the voters of many other Senatorial and House districts within the Commonwealth.

TENTH:—Plaintiffs aver that they possess the inherent right to vote for members of the Virginia General Assembly and to cast votes which are equally effective with the votes of every other citizen of said state and the said rights are recognized and guaranteed by the Constitution of the United States and, if not, should be protected by the constitutional laws of the State of Virginia; that plaintiffs' rights in this respect entitle them to the right to vote for three Democratic candidates for the Senate of Virginia and seven Democratic candidates for the House of Delegates of Virginia to offer for election in the General Election to be held in November 1963; and if the defendants are not enjoined from initiating, supervising, conducting elections, printing ballots, and certifying candidates to the various electoral boards, including the electoral board of the City of Norfolk, pursuant to the

the aforesaid unconstitutional acts of reapportionment, then plaintiffs will be deprived of their right to vote for the number of Senators and Delegates which fair apportionment would allocate to the City of Norfolk and the plaintiffs will suffer irreparable damage and harm in that they will be unequally and unjustly represented for a period of at least four years in the Senate of Virginia and two years in the House of Delegates. Plaintiffs being without remedy at law, the defendants, unless prevented by this Court, will, therefore, perform their duties in the conduct of said Democratic Primary in an unconstitutional manner and in violation of the plaintiffs' rights.

WHEREFORE, plaintiffs pray:

(1) That Levin Nock Davis, Secretary, State Board of Elections; Alexander M. Harman, Jr., Member, State Board of Elections; Harry E. Vaughan, Member, State Board of Elections; James M. Wolcott, Member, Electoral Board of the City of Norfolk; Joseph T. Fitzpatrick, Member, Electoral Board of the City of Norfolk; and James E. Baylor, Member, Electoral Board of the City of Norfolk, be made parties defendant to this bill of complaint; that they be required to answer the same; and that proper process may issue therefor.

(2) That an injunction may issue inhibiting and restraining the said defendants from certifying candidates, initiating, supervising, conducting, co-ordinating, printing ballots for, or in any way permitting or effecting a Democratic Primary election or any other election for the office of the House of Delegates or Senate of the General Assembly of Virginia pursuant to the malapportionment of representation provided for by the aforesaid sections 24-12 and 24-14.

of the Code of Virginia of 1950, as amended in 1962, and that said injunction continue in full force and effect until such time as the General Assembly of Virginia convenes in special session and enacts legislation that will afford plaintiffs and others similarly situated fair and equal representation in the Virginia General Assembly.

(3) That plaintiffs be granted such other and further and general relief as to equity may seem meet and just.

(s) N. P. Tyler  
N. P. Tyler

(s) L. A. Jett, Jr.  
L. A. Jett, Jr.

STATE OF VIRGINIA,  
CITY OF NORFOLK, to-wit:

N. P. Taylor and L. A. Jett, Jr., the plaintiffs named in the foregoing bill, being duly sworn, say that the facts and allegations therein contained are true, except so far as they are based upon statistics, studies and records, and as to such the same are believed to be true.

(s) N. P. Tyler  
N. P. Tyler

(s) L. A. Jett, Jr.  
L. A. Jett, Jr.

Taken, sworn to and subscribed before me, Catherine J. Crane, a Notary Public of and for the city of Norfolk, and the State of Virginia, this the 26th day of March, 1963.

(s) Catherine J. Crane  
Notary Public

My commission expires November 8, 1965.

**ANSWER AND CROSS-BILL**

Now come Levin Nock Davis, Secretary of the State Board of Elections of the Commonwealth of Virginia, and Alexander M. Harman, Jr., and Harry H. Vaughn, Members of the State Board of Elections of the Commonwealth of Virginia, and file their joint and several answer to the bill of complaint herein and say:

1. The allegations of the FIRST, SECOND and THIRD paragraphs of the bill of complaint are admitted.

2. For answer to the FOURTH paragraph of the bill of complaint, these defendants say that Section 40 of the Constitution of Virginia provides that the legislative power of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Delegates. These defendants admit that Sections 41 through 43, inclusive, of the Constitution of Virginia contain provisions consistent with the remaining allegations of said FOURTH paragraph of the bill of complaint.

3. For answer to the FIFTH paragraph of the bill of complaint, these defendants say that the General Assembly of Virginia, at its regular session of 1962, amended Sections 24-14 and 24-12 of the Virginia Code; that said amendments became effective on June 29, 1962; that said amendments govern the number of representatives to the Senate of Virginia and House of Delegates of Virginia from the City of Norfolk for which plaintiffs may vote and the number of representatives to the Senate of Virginia and the House of Delegates of Virginia from the City of Norfolk which will be selected in the Democratic Primary to be held

on July 9, 1963; and that the time within which prospective candidates could qualify for said Democratic Primary expired April 10, 1963. These defendants neither admit nor deny the remaining allegations of said FIFTH paragraph, including the accuracy of the matters set forth in Exhibits "A" and "B" annexed to the bill of complaint, and call for strict proof of the same.

4. The allegations of the SIXTH paragraph of the bill of complaint are denied.

5. For answer to the SEVENTH paragraph of the bill of complaint, these defendants say that, in 1960, the then Governor of Virginia, J. Lindsay Almond, Jr., appointed a commission to study the question of the reapportionment of the General Assembly of Virginia and directed said commission to make a report to the General Assembly of Virginia at its regular session of 1962; that the Bureau of Public Administration of the University of Virginia submitted plans, known as Plan A and Plan B, to said commission; that the commission declined to adopt either Plan A or Plan B; that the commission filed its report with the General Assembly of Virginia at its regular session of 1962; and that the General Assembly of Virginia declined to enact either Plan A or Plan B or legislation recommended by a majority of said commission. The allegations of the concluding sentence of the SEVENTH paragraph of the bill of complaint are denied. These defendants neither admit nor deny the remaining allegations of the SEVENTH paragraph of the bill of complaint, including the accuracy of the matters set forth in Exhibits "C," "D" and "E" annexed to the bill of complaint, and call for strict proof of the same.

6. The allegations of the first sentence of the EIGHTH paragraph of the bill of complaint are denied. These defend-

ants neither admit nor deny the remaining allegations of the EIGHTH paragraph of the bill of complaint, including the accuracy of the matters set forth in Exhibit "F" annexed to the bill of complaint, and call for strict proof of the same.

7. The allegations of the NINTH paragraph of the bill of complaint are denied.

8. The allegations of the TENTH paragraph of the bill of complaint are denied.

Now having fully answered, these defendants pray that the injunction sought by the bill of complaint be denied.

#### CROSS-BILL

In their bill of complaint the plaintiffs have alleged that the General Assembly of Virginia was not fairly apportioned by Sections 24-14 and 24-12 of the Virginia Code, as amended by the General Assembly of Virginia at its regular session of 1962, and that invidious discrimination against the citizens of Norfolk, Virginia, was caused thereby. They have further alleged that there was unconstitutional discrimination against the equal weight of the ballot afforded the citizens of Norfolk and that "pursuant to the aforesaid unconstitutional acts of reapportionment" the plaintiffs were deprived of their rights. All of these and similar allegations have been denied in the answer of these defendants.

These defendants now affirmatively allege that Sections 24-14 and 24-12 of the Virginia Code, as amended by the General Assembly of Virginia at its regular session of 1962, are valid enactments of the General Assembly of Virginia, that said enactments infringe no rights secured to the plaintiffs by the Constitution of Virginia or the Constitution of



the United States, and that said enactments effect no invidious discrimination against the citizens of Norfolk. These defendants further allege that they possess the legal right and are charged with the legal duty of executing the relevant election laws of the Commonwealth of Virginia in conformity with the apportionment of the Senate of Virginia and House of Delegates of Virginia contained in Sections 24-14 and 24-12 of the Code of Virginia (1950) as amended, and that, unless enjoined by this Court, they intend to discharge the duties encumbered upon them by such laws with respect to the Democratic Primary to be held on July 9, 1963, and the General Election to be held on November 5, 1963.

These defendants ask that this portion of their answer be treated as a cross-bill and that there be an adjudication on the merits of the issues raised by the allegations of the plaintiffs and the cross-allegations of these defendants as to the constitutionality of Sections 24-14 and 24-12 of the Virginia Code (1950) as amended.

WHEREFORE, these defendants join in the plaintiffs' prayer for other, further and general relief and pray that this Court will take jurisdiction of the controversy herein and adjudicate the rights, duties, powers and authorities of



the parties herein and enter such order as may be appropriate to protect such rights and compel the discharge of such duties.

LEVIN NOCK DAVIS  
ALEXANDER M. HARMAN, JR.  
HARRY H. VAUGHAN

Members of and constituting  
the State Board of Elections  
of the Commonwealth of  
Virginia

By: .....

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HENRY T. WICKHAM  
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Richmond 19, Virginia  
Special Assistant

#### CERTIFICATION

I certify that a copy of the within Answer and Cross-Bill was served upon Henry E. Howell, Jr., Esq., Suite 808 Maritime Tower, Norfolk 10, Virginia, counsel for plaintiffs, this 17th day of April, 1963, pursuant to the provisions of Rule 2:17 of the Rules of the Supreme Court of Appeals of Virginia.

.....  
Assistant Attorney General

**ANSWER TO CROSS-BILL**

Now come the plaintiffs and in answer to the cross-bill filed herein set forth as follows:

**FIRST:**—The plaintiffs deny that Sections 24-14 and 24-12 of the Code of Virginia of 1950, as amended by the General Assembly at its regular session in 1962 are valid enactments of the General Assembly of Virginia and deny the allegation that said enactments do not impose invidious discrimination against the citizens of Norfolk.

**SECOND:**—Plaintiffs deny that defendants possess the legal right to execute the relevant election laws of the Commonwealth of Virginia for an election to the Senate of Virginia and the House of Delegates of Virginia in the Democratic Primary to be held on July 9, 1963, or in the General Election to be held November 5, 1963, when said elections are held pursuant to unconstitutional reapportionment statutes.

**THIRD:**—Plaintiffs state that if a Democratic Primary is held pursuant to the aforesaid unconstitutional statutes Democratic voters of the City of Norfolk will be irreparably damaged in that they will be deprived of the right to elect Democratic nominees in the numbers that would be allocated to the citizens of Norfolk if the State of Virginia was apportioned by constitutional enactments, and further, if a General Election be held pursuant to the aforesaid unconstitutional apportionment statutes all voters, regardless of party, will be deprived of fair, equitable and constitutional representation in the General Assembly and the value of their votes will be unconstitutionally diluted, devalued and discriminated against.

FOURTH:—Plaintiffs join the defendants in asking this Court to expeditiously and promptly adjudicate the merits of the issues raised by the allegations of the plaintiffs and the cross-allegations of the defendants as to the constitutionality of Sections 24-14 and 24-12 of the Code of Virginia of 1950, as amended.

WHEREFORE, these plaintiffs respectfully request this Court to hear this cause in ample time preceding the Democratic Primary of July 9, 1963, so as to enable the plaintiffs to obtain the relief sought in the prayer of their complaint filed herein.

N. P. TYLER and L. A. JETT, JR.,  
who sue in behalf of themselves  
and all other citizens similarly situated,

By: (s) Henry E. Howell, Jr.  
*Of Counsel*

#### CERTIFICATION .

I hereby certify that a copy of the foregoing Answer to Cross-Bill was this date mailed to Robert Y. Button, Attorney General of Virginia, R. D. McIlwaine, III, Assistant Attorney General of Virginia, and Henry T. Wickham, Esquire, counsel for the defendants. Dated at Norfolk, Virginia, this 26th day of April, 1963.

**PROOF OF SERVICE**

I, R. D. McIlwaine, III, one of counsel for the appellants herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 29th day of August, 1963, I served copies of the within Appendix on Behalf of Appellants on the several appellees herein by mailing same in duly addressed envelopes, with first-class postage prepaid, to their respective attorneys of record as follows: Edmund D. Campbell, Esquire, Southern Building, Washington, D. C.; E. A. Prichard, Esquire, 106 N. Payne Street, Fairfax, Virginia; Sidney H. Kelsey, Esquire, 1408 Maritime Tower, Norfolk, Virginia; Henry E. Howell, Jr., Esquire, 808 Maritime Tower, Norfolk, Virginia; and Leonard B. Sachs, Esquire, Citizens Bank Building, Norfolk, Virginia.

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*Assistant Attorney General*